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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1998

Addendum

MAURITIUS

[8 June 1998]

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* The initial report submitted by the Government of Mauritius is contained in document CAT/C/24/Add.1; for its consideration by the Committee, see documents CAT/C/SR.212, 213 and the Official Records of the General Assembly, Fiftieth session, Supplement No. 44 (A/50/44, paras. 132-145).

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I. INFORMATION OF A GENERAL NATURE

1. Since the presentation of its initial report by Mauritius, the death penalty was abolished following the passing of the Abolition of Death Penalty Act in December 1995. In the same year, section 16 of the Constitution was amended to prohibit any discrimination by laws or public authorities on the ground of sex. Further, national elections were held in December 1995 and a new Government, led by Prime Minister Dr. Navin Ramgoolam, assumed office. The new Government has emphasized its commitment to the respect and promotion of human rights. In that context, Government has created a portfolio for human rights, for which the Attorney-General and Minister of Justice is responsible.

2. In October 1996, Mauritius hosted the twentieth session of the African Commission on Human and Peoples' Rights, which coincided with the tenth anniversary of the African Charter on Human and Peoples' Rights and was an excellent opportunity for Mauritius, as host country, to reaffirm its commitment to the promotion and protection of human rights.

3. At the request of the Government of the Republic of Mauritius, the High Commissioner/Centre for Human Rights (HC/CHR) conducted a needs assessment mission to the Republic of Mauritius from 27 November to 6 December 1996, funded by the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights. Following the recommendations made by the mission, the Government is introducing in the next parliamentary session the Protection of Human Rights Bill. The Bill provides for the setting up of a National Human Rights Commission with the following functions:

(a) To inquire, of its own motion or on the basis of a communication from any individual or any other person acting on his behalf, into allegations that anyone's human rights have been or are likely to be violated by and act or omission of any person, and recommend appropriate remedial measures;

(b) To visit any prison or other places of detention under the control of the State to study the living conditions of the inmates, and make recommendations thereon;

(c) To review the safeguards provided by or under the Constitution or any other enactment for the protection of human rights and recommend measures for their effective implementation;

(d) To review the factors or difficulties that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(e) To spread human rights literacy among various sectors of society and promote awareness of the safeguards available for the protection of these rights, through publications, the media, seminars or any other means;

(f) To encourage the efforts of non-governmental organizations and institutions working in the field of human rights;

(g) To resolve complaints by a conciliatory procedure;

(h) To exercise such other functions as the Commission may consider to be conducive to the promotion and protection of human rights.

4. A training programme for the police has been established in collaboration with the Attorney-General's Office to sensitize the Police Department further on international human rights standards and law enforcement. The programme will also cover the United Nations Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Standard Minimum Rules for the Treatment of Prisoners.

5. The existing Extradition Act of 1970 is now being amended to incorporate article 3 of the Convention.

6. Amnesty International (Mauritius) is at present (April 1998) hosting a workshop on the theme of human rights in Mauritius. Representatives of the Police Department, prisons authorities, primary and secondary school and trade unions are among the participants. Several prominent international experts in the field of human rights addressed the participants. During the workshop the representative of the Ministry of Education confirmed that the Ministry intended to introduce human rights as a subject in the school curriculum.

7. To mark the fiftieth anniversary of the Universal Declaration of Human Rights, the Government as well as non-governmental organizations are organizing workshops and exhibitions and a campaign primarily aimed at sensitizing students. A plaque inscribed with the principles of the Universal Declaration will be unveiled on the newly developed site of the Waterfront in Port Louis, the capital of Mauritius.

8. The present report was communicated to the Indian Ocean Institute for Human Rights and Democracy. The comments of the President of the Institute are found at annex 1 (see list of annexes).

II. INFORMATION RELATING TO THE ARTICLES IN PART I OF THE CONVENTION

Articles 1, 2 and 4

9. Acts of torture, as well as attempts at and acts of complicity in torture, are generally prohibited under the Constitution and the Criminal Code, although there is no specific offence of torture (as defined in article 1 of the Convention) in the laws. Acts of torture by which severe mental anguish is intentionally inflicted on a person are not offences under Mauritian criminal law. The aggrieved party in the latter case has nevertheless the option of instituting a civil action in damages to obtain appropriate compensation for interference with his or her rights.

10. Under article 86 of the Criminal Code, a public officer or person appointed by the Government or the police, acting in the discharge of his functions or for the purpose of discharging such functions who, without lawful reason, uses or causes to be used any violence towards any person is, according to the nature and extent of the violence used, liable to double the punishment which would have been incurred by any other person guilty of the like crime or misdemeanour.

11. The forthcoming establishment of the National Human Rights Commission (see para. 3 above) is seen as an important step in the development of the protection of human rights. The Commission will be independent in that it will not be under the control of any person or authority in the performance of its duties. It will provide an individual with additional means to seek redress if he or she is subjected to torture or runs the risk of being extradited to a State where there are reasonable grounds to believe that he or she would be subjected to torture. The power conferred on the Commission to inquire into a case of violation of human rights is without prejudice to the jurisdiction of the courts or the power conferred on the Director of Public Prosecutions or Service Commissions under the Constitution. Service Commissions deal, inter alia, with disciplinary matters involving public officers.

12. The Commission will also have the power to inquire into cases of police brutality and report to the Director of Public Prosecutions. At present, such cases are inquired into by an investigative unit forming part of the police force. As pointed out in the initial report, those inquiries are not perceived by some as being impartial.

Article 3

13. As mentioned at paragraph 5 above, the Extradition Act will be replaced by a new Act which will, inter alia, incorporate article 3 of the Convention.

Article 5

14. A Mauritian court already has jurisdiction to try an offence committed within the jurisdiction of Mauritius or on board a ship or aircraft registered in Mauritius. The position of the reporting State in relation to article 5 has therefore remained unchanged.

Article 6

15. Where a person is suspected of having committed, or is likely to have committed, or intends to commit, a crime including physical acts and ill-treatment that fall under the heading of "torture" in the Convention, that person may be deprived of his liberty. The authorities must, before imposing any restriction on that person's liberty, ensure strict adherence to the provisions of the law which are applicable under the Constitution, the Bail Act, the Criminal Procedure Act and the District and Intermediate Courts (Criminal Jurisdiction) Act. The Extradition Act is applicable if the person is likely to be extradited.

16. Before any action is triggered, the police has to have a reasonable suspicion that the person has committed (or is likely to, or intends to commit) a crime. Pursuant to article 11 of the Code of Criminal Procedure a police officer may effect the arrest of a suspect where he is in possession of a warrant issued by a magistrate authorizing him to do so. In circumstances where a crime is being committed or attempted to be committed, a private person or a police officer may arrest the offender without a warrant.

17. Immediately upon arrest the suspect must be informed of his right to legal counsel and of the nature of the criminal offence of which he is suspected. He has the right to use the telephone to contact his relatives or counsel. Furthermore, he must be informed of his right not to answer any questions. The suspect must be given access to his counsel to give instructions to the latter. Since December 1994, a Charter containing rights to persons held in police custody has been distributed at police station level to inform detainees of their rights.

18. In June 1997 the case of The State v. M.A. Coowar (annex 2) was referred to the full bench of the Supreme Court to decide on the legal obligation of the police under sections 3 and 5 (3) (b) of chapter II of the Constitution (see annex 3) to inform an accused party who is in police custody of his right to counsel. The Court held that the right of a person in police custody to consult a legal representative of his choice enshrined in section 5 (3) of the Constitution includes, or is deemed to include, the right to be informed about that right. It further held that the right to communicate with a legal adviser is capable in some situations of being of little value if the person is not informed of that right.

19. After the arrest of a suspect, section 13 of the District and Intermediate Court (Criminal Jurisdiction) Act requires the officer to bring the party arrested to jail or before a magistrate, according to the import of the warrant issued by the magistrate. The magistrate decides whether the arrest was lawful or continued detention is necessary. The Bail Act 1989 governs the detention and release of detainees and provides, inter alia, that every detainee shall be brought before a magistrate within a reasonable time of his arrest or detention, and that a detainee shall not be entitled to be released on bail where:

(a) He has broken any condition of bail;

(b) He has not complied with any other condition upon which he has been released;

(c) He is not likely to abide by the conditions of his bail, if released;

(d) His continued detention is necessary:

(i) For his own protection;

(ii) For the protection of the public or any likely witness or any evidence;

(iii) For his own welfare, if he is a child or a young person;

(iv) For the reason that it would not be practicable to complete the police inquiry if he is released;

(v) In view of the seriousness of the offence and the heavy penalty provided by law;

(vi) In view of his character and antecedents; or

(vii) In view of the fact that he is a fugitive from justice.

20. The Supreme Court has observed in the case of Sheriff v. District Magistrate of Port Louis (1989) MR 260 that it is only "in exceptional circumstances that the liberty of the subject can be subordinated to the greater needs of society requiring the forfeiture of his freedom. ... Detention is the ultimate weapon that the authorities should resort to when everything else has failed."

21. In DPP v. IOIB and Shanto (1989) MR 110, reference is made to the practice of entering a provisional information when a suspect is arrested or brought into custody, in order to bring the detention of the individual under judicial supervision and control and to prevent administrative detention. It will then be for the judicial authority to decide whether the detainee should be released on bail or not.

22. The Supreme Court has also made it clear, in Hossen v. District Magistrate of Port Louis (1993) MR 9, that since the Constitution specifies that a suspect must be released unless brought to trial within a reasonable time, the Court may, irrespective of the Bail Act, release a detained person if it can be shown that the authorities responsible for inquiring into an offence are procrastinating.

23. Where the magistrate decides that there are satisfactory grounds to prolong the continued detention of the suspect, the magistrate shall order that the suspect be remanded to police custody and brought before him after 10 days to review the detention.

24. Section 10 of the Constitution (see annex 3) provides that where a person is charged with a criminal offence, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

Articles 7 and 8

25. The Criminal Code, the Criminal Procedure Act and the District and Intermediate Courts (Criminal Jurisdiction) Act contain provisions which enable the Director of Public Prosecutions (DPP) to take measures to prosecute cases of criminal offences which fall within the jurisdiction of the courts in Mauritius. Cases contemplated under article 7 are therefore submitted to the DPP for appropriate action. However, as already pointed out, it is a sine qua non condition that the offence must take place on Mauritian territory.

26. The notion of universal jurisdiction as provided under article 5 of the Convention is not applicable. Where an offence takes place outside Mauritian territory the Extradition Act 1970 lays down the procedures to extradite the offender. The relevant sections of the Extradition Act were dealt with in the initial report.

27. The law and practice of Mauritius are in conformity with paragraphs 2 and 3 of article 7.

Article 9

28. As pointed out in the initial report, the practice of providing assistance in all matters of crime, including cases of torture, has long been seen as an important objective. Assistance, including the supply of all evidence at the disposal of the reporting State necessary for the proceedings, is offered on an ad hoc basis unless regulated in a bilateral convention.

29. The request for legal assistance is normally acceded to if it is made on the basis of reciprocity. More important, however, the requesting State must recognize fundamental rights including the rights of due process.

30. On 24 August 1996 Mauritius signed the Protocol on combating illicit drug trafficking in the Southern African Development Community (SADC) Region. The Protocol was signed by all States members of SADC with a view to reducing and eventually eliminating drug trafficking, money laundering, corruption and illicit use and abuse of drugs through cooperation among enforcement agencies and reduction of demand through coordinated programmes in the region. Mauritius also ratified the Protocol last year.

31. A legal workshop was organized in October 1997 to oversee the implementation of the Protocol. Once the appropriate mechanism is established to promote mutual legal assistance among member States, it is hoped that the Protocol will be extended to cover all criminal activities affecting the region.

Article 10

32. The curriculum at the Police Training School already includes:

(a) Custody, interrogation and treatment of any individual subjected to arrest and detention;

(b) Use of minimum force in the arrest of the individual;

(c) The rights of the individual under the Constitution of Mauritius;

(d) The principles and procedures relative to the interview and interrogation of witnesses and detainees according to the Judges' Rules.

33. Police Standing Orders, instruction books and circulars relative to the conduct of police officers have recently been updated. Police Standing Orders form the basis of frequent lectures at change-of-duty parades and during weekly and monthly instruction classes held by gazetted officers. In addition, 134 police officers involved in the custody, interrogation and treatment of persons received special training from the Advisor to the Police Force in 1977 and 1998. Human rights will receive greater attention during the training of police officers. It is felt that awareness and understanding

of human rights should exist at every level of the police force. It is in that context that the Attorney-General's Office is working more closely with the Police Training School to achieve those objectives.

34. It is expected that a police officer, after completing an initial training course, will have sufficient knowledge of the guidelines laid down for the treatment of arrested persons and the procedures in relation to the questioning and recording of statements.

35. The police force is considering a review of its recruitment policy by introducing an evaluation scheme extended over a period of 15 days whereby recruits on joining the force, would be required to undergo a field training conducted by experienced police officers, assisted by psychologists, who would help to identify negative qualities of recruits which are likely to foster brutality and trigger irrational behaviour in moments of stress. In future, potential candidates for the police force will also have to undergo psychological tests to gauge their level of apprehension, control of temper and aggressiveness.

36. The treatment of detainees in the prisons of Mauritius is regulated by the provisions of the Reform Institutions Act and the regulations made thereunder. The relevant provisions are dealt with in the initial report.

37. As part of their training, prison offices are expected to be fully acquainted with the United Nations Minimum Rules for the Treatment of Prisoners. The prison authorities regularly seek assistance from the Attorney-General's Office to run courses on legislation governing prison administration. The Trainee prisons officers follow a course run by the prisons and correctional institutional department, which covers professional conduct and the code of discipline, the treatment of the offender, human growth and development as well as psychology.

Articles 11 and 15

38. The interrogation of a suspect and recording of statements from him must be carried out in strict compliance with the guidelines laid down in the Judges Rules and Administrative Directions to the Police on interrogation and the taking of statements (see annex 4). The interrogation must be carried out as soon as possible to prevent the person arrested from being exposed to unnecessary inconvenience. A suspect, by virtue of section 10 of the Constitution, is innocent until proven guilty.

39. The Rules provide that the interrogating officer is obliged to point out to the detainee prior to questioning that he is not obliged to answer any questions and to caution him that anything he said may be used in evidence against him. The interrogating officer must refrain from doing or saying anything that amounts to procuring a statement that cannot be said to have been made voluntarily. This includes use of force, inducement, mental or physical coercion and so on. A confession obtained in those circumstances is not admissible in a court of law. Counsel for defence would normally challenge the admissibility of the statements and cross-examine the

interrogator on the circumstances in which he recorded the statement. The trial judge would subsequently have to decide whether the recorded statement is admissible and, if so, what weight to give it.

40. It is worth mentioning that after completing inquiries into more serious offences, the police have to submit the case file to the office of the DPP. Where the DPP's office is not satisfied that the inquiry has been conducted in compliance with the procedures laid down, it may seek further clarifications from the inquiring officers to ascertain the reliability of the evidence before advising prosecution.

41. If it comes out that the statements recorded from an accused party have been obtained by the use of force, the police officers concerned will be suspended from the force and an inquiry will be instituted by a unit of the police force.

Article 12

42. If a case of torture is suspected, the police will start an inquiry and submit the results to the DPP. Where there is a possibility that the impartiality of the police may be questioned, the DPP may require, under section 64 of the District and Intermediate Courts (Criminal Jurisdiction) Act, a magistrate to proceed to where he has reasonable ground to believe that an offence has been committed. Furthermore, under section 64 (2) of the Act, in all criminal cases the DPP may also require from any magistrate or officer any further and additional information, inspection or examination or such other legal matters and proceedings as may be necessary.

43. Where death has occurred as a result of a suspected act of torture in prison or in police custody, the DPP may require a magistrate to hold a judicial inquiry into the cause of death, under section 111 of the District and Intermediate Courts (Criminal Jurisdiction) Act.

44. Under section 13F of the Police Act a police officer who has reason to suspect that a person has committed, or is about to commit, an offence which will endanger public safety or public order, may arrest that person and use such force as may be necessary. The force used must be reasonable and moderate. Where the officer has used force against persons in the exercise of his duties he must immediately report this use of force to his superior who may institute an investigation.

45. Recent figures in relation to reported cases of assault perpetrated by police officers on detainees in police cells detention centres and the action taken subsequently are as follows (1995-March 1998):

Number of cases reported	34
Number of cases classified	10
Number of cases in which prosecution has been advised by the DPP	4

Number of cases sub judice	4
Number of cases in which police officers were convicted	0
Number of cases dismissed by the court	0
Number of cases in which disciplinary action has been taken against police officers	0
Number of cases in which advice has been tendered for prosecution of complainant	2
Number of cases still under investigation	15
Number of cases pending advice from DPP	3
Number of cases in which the incriminated police officer was given a severe warning as advised by DPP	0
Number of cases causing incapacity for more than 20 days	0

Article 13

46. Provisions exist in the Police Standing Orders which require high-ranking police officers to visit and interview detainees to take note of any complaint which they may have.

47. The Police Information and Operations Room has a voice message system which is operational on a 24-hour basis and which allows members of the public to complain about the police or generally vent any grievance they may have on the phone without having to call personally at police stations.

48. In addition to the normal channels of complaints through the police, a person who alleges that he has been subjected to torture may seek redress by:

(a) Applying to the Supreme Court for redress under section 17 of the Constitution (see initial report);

(b) Petitioning the Ombudsman under section 97 of the Constitution;

(c) Seeking an administrative law remedy before the Supreme Court;

(d) Entering a private prosecution;

(e) Petitioning the National Human Rights Commission, once the Commission becomes functional.

49. It must be pointed out that the Ombudsman, like members of the judiciary, is independent of the Government. Section 101 of the Constitution states that, in the discharge of his functions, the Ombudsman shall not be subject to the direction or control of any other person or authority.

50. The Ombudsman may institute an investigation in response to a request but also on his own initiative. He may investigate cases of abuse of authority by a government department, the police force or a member thereof and the Mauritius Prisons Service amongst others. The Ombudsman may make such recommendations as he thinks fit after concluding his investigation. He shall send a copy of his report to the Prime Minister and to any minister concerned. The Ombudsman is also required by law to make an annual report to the President concerning the discharge of his functions which shall be laid before the Assembly.

Article 16

51. Please see observations made in relation to articles 10, 11, 12 and 13.

List of annexes*

1. Comments from the Indian Ocean Institute for Human Rights and Democracy.

2. The State v. Coowar 1997.

3. Chapter II - Constitution of the Republic of Mauritius.

4. Judges Rules and Administrative Directions to the Police.

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* These annexes are available for consultation in the files of the Office of the United Nations High Commissioner for Human rights.